Spencer, Nadine

From: Seth Newton <sethnewton419@gmail.com>
Sent: Wednesday, May 20, 2020 2:03 PM
To: Kolman, Joe
Subject: [EXTERNAL] TENORM Rules

ENVIRONMENTAL QUALITY COUNCIL 2019-20

May 27, 2020 Exhibit 6

Hello Mr. Kolman,

My name is Seth Newton. I offered public comment at the April 27 meeting of the Environmental Quality Council regarding Montana's TENORM rules. I live and ranch outside of Glendive, downstream of (and on the road to) Oaks Disposal.

I wanted to follow up with a few additional comments by email.

Please withdraw your informal objection, and permit the rulemaking as it stands to proceed to completion.

The TENORM draft rules that proposed increasing Montana's radioactivity limit from 50 to 200 picocuries per gram was *not* the "original" proposal. The original proposal was in 2017 and set the radioactivity limit at 50 picocuries per gram. The 2019 rule draft, which proposed increasing the limit to 200 picocuries per gram, was the one that dramatically changed from the "original" proposal—not the other way around.

Committee members should know that there were many provisions of the TENORM rules on which the Montana Petroleum Association already got their preferred outcome. One example is that North Dakota only allows landfills to accept 25,000 tons of TENORM each year, in order to keep radioactivity concentrations low. We requested a similar provision. Montana Petroleum Association disagreed, and this provision did not make it into the final rules.

Another example is that initially the DEQ had proposed regulating drill cuttings and drilling mud as TENORM. Myself and other citizens supported this provision, Montana Petroleum Association did not. It was not included in the final draft.

My point is that the final draft already reflects consensus, compromise, and the input of the industry. There are items in there that please those of us who live near these facilities. There are items in there (or missing from there) that please the Montana Petroleum Association.

A limit of 50 picocuries per gram is consistent with science, North Dakota's rules, the discussion at the TENORM work group, and the 2,400 comments received from members of the public and directly affected citizens like myself.

The 50 picocuries per gram limit already is an increase from what Montana previously used. Oaks opened with a radioactivity limit of **30 picocuries per gram**. When the DEQ raised the limit to 50 in 2015, they stated their reasoning for doing so as: "to be commensurate with regional States" and to "stay conservative yet consistent with nearby states for landfill acceptance criteria while remaining protective of public health and the environment."

A radioactivity limit of 50 picocuries per gram is supported by two scientific studies: one by Argonne National Laboratory, commissioned by the state of North Dakota, and one by Tetra Tech, commissioned by the state of Montana.

Argonne stated: "At a concentration of 51.6 picocuries per gram, a worker could potentially reach the 100 mrem/year exposure limit. The NDDoH used this result to propose a disposal limit of 50 picocuries per gram."

Tetra Tech evaluated the idea of establishing a "rolling average." They concluded that accepting TENORM waste at concentrations above 50 picocuries per gram "would require a **robust statistical program** to calculate the cumulative

running average concentrations of all radionuclides. It should also be noted that depending on the thorium-232 concentration in the TENORM, the material could be licensable under the NRC (Nuclear Regulatory Commission) as source material." (see page 27 of Tetra Tech's report)

No version of the draft TENORM rules – not in 2017, 2019, or 2020 – outlined the "robust statistical program" that Tetra Tech argued was necessary in order for a "rolling average" to be safe and protective.

I would also venture to guess that no landfill in Montana accepting TENORM would like the additional regulations that get slapped on you when you get bumped up to the level of accepting "source material under the NRC."

Both studies base their assumptions on a "generic threshold value," or what we might call a "static" limit. A generic threshold value means that there is a specific number or level at which it's safe to accept TENORM, and anything above that would be rejected. Once you go above that level, you'd need to go back to the drawing board on the conclusions and assumptions in both studies.

Several committee members expressed frustration at hearing us speak about Oaks Disposal. We speak about Oaks because it is the only living example of how radioactive oil waste is being handled and disposed of in the state of Montana. We are not interested in the rules for abstract reasons or for the sake of the rules in a vacuum. We are interested in them because of how they will apply, on the ground, to the landfills – operational or proposed – near us. If we cannot use the only real life example available to us to evaluate the proposed rules, I'm not sure how we can discuss them at all.

Oaks Disposal also serves as a 7 year operational example of how radioactive oil waste disposal has functioned in Montana. Since the landfill opened, myself and my neighbors have had legitimate concerns about the operations of the facility. Only a few years into operation, we've learned that something within the landfill system is not working. This is not based on speculation, but comes directly from the groundwater monitoring reports that Oaks itself submits to the DEQ. This issue has been investigated into but still the source of groundwater exceedances has not been identified.

These rules are not just about Oaks. The rules will apply to each of the six landfills permitted, proposed, or up and running that accept TENORM. The rules are for all Montanans and the legacy we would like to leave our state with.

The final draft of rules, from January 2020, got this right. Please withdraw your informal objection and let them stand.

Thank you for your time and consideration,

Seth Newton
Glendive